

AMENDED IN SENATE MAY 11, 2010
AMENDED IN SENATE APRIL 27, 2010
AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1172

Introduced by Senator Negrete McLeod

February 18, 2010

An act to amend Section 156.1 of, and to add Sections 315.2, 315.4, and 315.6 to, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and *kept confidential* and are not subject to discovery or subpoena unless otherwise expressly provided by law. ~~The bill would require the department or board contracting for those services to have an audit conducted at least once every 3 years by a specified independent~~

~~reviewer or review team, would require that reviewer or review team to prepare an audit report and to submit it to the Legislature, the department, and the board by June 30 every 3 years, with the first report due in 2013, and would require the department, the contract vendor, and the board to respond to the report, as specified.~~

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 156.1 of the Business and Professions
2 Code is amended to read:
3 156.1. (a) Notwithstanding any other provision of law,
4 individuals or entities contracting with the department or any board
5 within the department for the provision of services relating to the
6 treatment and rehabilitation of licentiates impaired by alcohol or
7 dangerous drugs shall retain all records and documents pertaining
8 to those services until such time as these records and documents
9 have been reviewed for audit ~~pursuant to subdivision (e) by the~~
10 *department*. These records and documents shall be retained for

1 three years from the date of the last treatment or service rendered
2 to that licentiate, after which time the records and documents may
3 be purged and destroyed by the contract vendor. This provision
4 shall supersede any other provision of law relating to the purging
5 or destruction of records pertaining to those treatment and
6 rehabilitation programs.

7 (b) Unless otherwise expressly provided by statute or regulation,
8 all records and documents pertaining to services for the treatment
9 and rehabilitation of licentiates impaired by alcohol or dangerous
10 drugs provided by any contract vendor to the department or to any
11 board within the department shall be kept confidential and are not
12 subject to discovery or subpoena.

13 ~~(e) (1) An external independent audit of an individual or entity~~
14 ~~contracting with the department pursuant to subdivision (a) shall~~
15 ~~be conducted at least once every three years by a qualified,~~
16 ~~independent reviewer or review team from outside the department~~
17 ~~with no real or apparent conflict of interest with the contractor~~
18 ~~providing the services. The independent reviewer or review team~~
19 ~~shall be competent in the professional practice of internal auditing~~
20 ~~and assessment processes.~~

21 ~~(2) The independent reviewer or review team shall prepare an~~
22 ~~audit report that assesses the contractor's performance in adhering~~
23 ~~to any standards established by the department or the board and~~
24 ~~shall submit that report to the Legislature, the department, and the~~
25 ~~board by June 30 every three years, with the first report due in~~
26 ~~2013. The audit report shall make findings and identify any~~
27 ~~material inadequacies, deficiencies, irregularities, or any other~~
28 ~~noncompliance with the terms of the contract.~~

29 ~~(3) The department, contract vendor, and the board shall respond~~
30 ~~to the assessment and findings in the audit report prior to~~
31 ~~submission to the Legislature.~~

32 ~~(d)~~

33 (c) With respect to all other contracts for services with the
34 department or any board within the department other than those
35 set forth in subdivision (a), the director or chief deputy director
36 may request an examination and audit by the department's internal
37 auditor of all performance under the contract. For this purpose, all
38 documents and records of the contract vendor in connection with
39 such performance shall be retained by such vendor for a period of
40 three years after final payment under the contract. Nothing in this

1 section shall affect the authority of the State Auditor to conduct
2 any examination or audit under the terms of Section 8546.7 of the
3 Government Code.

4 SEC. 2. Section 315.2 is added to the Business and Professions
5 Code, to read:

6 315.2. (a) A board, as described in Section 315, shall order a
7 licensee of the board to cease practice if the licensee tests positive
8 for any substance that is prohibited under the terms of the licensee's
9 probation or diversion program.

10 (b) An order to cease practice under this section shall not be
11 governed by the provisions of Chapter 5 (commencing with Section
12 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

13 (c) A cease practice order under this section shall not constitute
14 disciplinary action.

15 SEC. 3. Section 315.4 is added to the Business and Professions
16 Code, to read:

17 315.4. (a) A board, as described in Section 315, may adopt
18 regulations authorizing the board to order a licensee on probation
19 or in a diversion program to cease practice for major violations
20 and when the board orders a licensee to undergo a clinical
21 diagnostic evaluation pursuant to the uniform and specific standards
22 adopted and authorized under Section 315.

23 (b) An order to cease practice under this section shall not be
24 governed by the provisions of Chapter 5 (commencing with Section
25 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

26 (c) A cease practice order under this section shall not constitute
27 disciplinary action.

28 SEC. 4. Section 315.6 is added to the Business and Professions
29 Code, to read:

30 315.6. Unless otherwise authorized by statute or regulation, a
31 board, as described in Section 315, shall not disclose to the public
32 that a licensee is participating in a board diversion program unless
33 participation was ordered as a term of probation. However, a board
34 shall disclose to the public any restrictions that are placed on a
35 licensee's practice as a result of the licensee's participation in a
36 board diversion program provided that the disclosure does not
37 contain information linking the restriction to the licensee's
38 participation in the board's diversion program.

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